IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 418 OF 2001

Shri Vasant Akaram Jadhav. ..Appellant

v/s.

Shri Tanaji Atmaram Jadhav & Ors. .. Respondents

Shri M.L.Patil, Advocate for the Appellant.

Shri P.M.Pradhan for Respondent No.1.

Shri V.P.Patil & Pankaj Das for Respondent No.2(2)/4.

CORAM: A.S.OKA, J.

DATE : 13TH JULY, 2004.

ORAL JUDGMENT :-

1. Heard Shri Patil, Advocate for the Appellant.

2. The Appellant is the original Defendant No.4. The Respondent No.1 is the original Plaintiff and Respondents No.2 to 4 are the Defendants No.1 to 3. The Appellant/Defendant No.4 is a subsequent purchaser of the suit property. Shri Patil, the learned Counsel appearing for the Appellant at the outset submitted that the original Defendants no.5 to 7 were not

impleaded as Respondents in the Appeal preferred by the Respondent No.1. He submitted that the Defendants No.5 to 7 have a share in the suit property alongwith the Respondents No.2 to 4. He submitted that decree for specific performance could not have been passed without impleading the said Defendants No.5 to 7. Shri Patil further submitted that the Trial Court recorded a finding that the Appellant was a bonafide purchaser and the Appellate Court had no reason to upset that finding. He submitted that finding recorded by Appellate Court on the said issue is perverse. Shri Patil further submitted that the Trial Court considered various factors such as delay in approaching the court, inaction on the part of the Respondent No.1 and the improvements made by the Appellant, for exercising discretion against Respondent No.1/original Plaintiff. He submitted that the Appellate Court has not dealt with the said finding recorded by the Trial Court and has not dealt with the factor which were considered by the Trial Court while exercising discretion under Section 20 of the Specific Relief Act,1963. He submitted that the Appellate Court has exercised the discretion under Section 20 of the Specific Relief Act, 1963 arbitrarily. Decree for specific performance could not have been passed against the Respondent No.1.

He also invited my attention to the finding recorded by the Trial Court that the Respondents No.2 to 4 and Respondent No.1 have colluded with each other.

3. I have considered submissions made by the learned Counsel for the Appellant. The agreement for sale dated 13th May, 1976 executed in favour of the Respondent No.1 was duly registered under the Provisions of Indian Registration Act, 1908. It is an admitted position that the Appellant did not make any enquiry or did not make any effort to take search in the office of sub-registrar. Therefore, the Appellate Court was right in holding that the Appellant cannot be a bonafide purchaser as the agreement in favour of the Respondent No.1 is duly registered. Therefore, no fault can be found with the finding recorded by the Appellate Court on the said aspect.

4. Once it is held that the Appellant is not a bonafide purchaser, the Appellant cannot claim better rights than the right of his predecessor in title i.e. the Defendant No.1. In so far as the original defendant No.5 to 7 are concerned, no decree was sought against the said defendants and decree for specific performance is sought only against the Respondents No.

2 to 4. Therefore, there is no substance in the contention raised by Shri Patil as regards non joinder of the said Respondents.

5. Once the Appellate court found that Appellant was not a bonafide purchaser and the agreement for sale in favour of the Respondent No.1 is established, there was no reason for the Appellate court to deny decree for specific performance to Respondent No.1. The Agreement for sale is dated 13th May, 1976 and the suit was filed by the Respondent No.1 in the year 1978. Merely because the suit was disposed of after 11 years, relief cannot be denied to the Respondent No.1. In the circumstances, no fault can be found with the decree passed by the Appellate court in an Appeal preferred by the original Plaintiff after holding that the Defendant No.4 who was a subsequent purchaser has not taken care which any prudent purchaser ought to have taken before entering into transaction. No substantial question of law arises. Hence Second Appeal is dismissed with no order as to cost.

JUDGE

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 533 OF 2001

IN

SECOND APPEAL NO. 418 OF 2001

Shri Vasant Akaram Jadhav. ..Appellant

v/s.

Shri Tanaji Atmaram Jadhav & Ors. .. Respondents

Shri M.L.Patil, Advocate for the Appellant.

Shri P.M.Pradhan for Respondent No.1.

Shri V.P.Patil & Pankaj Das for Respondent No.2(2)/4.

CORAM: A.S.OKA, J.

DATE : 13TH JULY, 2004.

P.C. :-

1. In view of dismissal of the second appeal, the Civil Application does not survive. Hence disposed of accordingly.

JUDGE

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.418 OF 2001.

DATE OF DECISION : 13TH JULY, 2004.

FOR APPROVAL AND SIGNATURE OF

THE HON'BLE SHRI JUSTICE A.S.OKA.

1. Whether Reporters of Local Papers may be allowed to see the Judgement ?

2. Whether to be referred to the Reporter or not ?

3. Whether Their Lordships wish to see the fair copy of the Judgement ?

4. Whether this case involves a substantial question of law as to interpretation of the Constitution of India 1950 or any order made thereunder ?

5. Whether it is to be circulated to the Civil Judges ?

6. Whether the case involves an important question of law and whether a copy of the judgement should be sent to Nagpur, Aurangabad & Goa Offices ?

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